



(2)

SEP 18 1942

CHARLES EDMOND ORRLEY  
CLERK

In The  
**SUPREME COURT OF THE UNITED STATES**

October Term, 1942

No. **347**

**ERNEST NEWTON KALB,**

Petitioner,

vs.

**YELLOW MANUFACTURING ACCEPTANCE  
CORPORATION,**

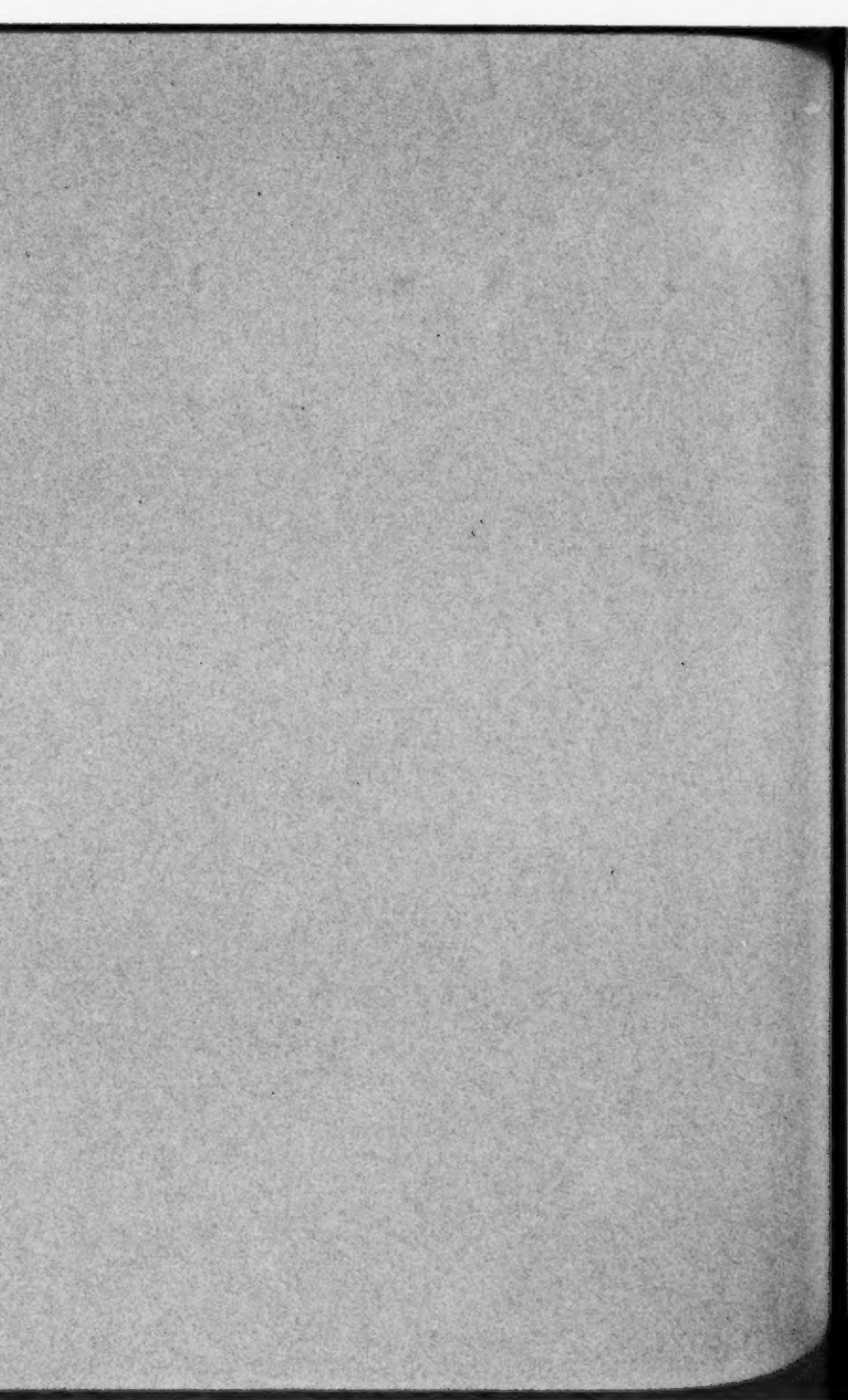
Respondent.

On application for Writ of Certiorari to the United States  
Circuit Court of Appeals for the Seventh Circuit.

**RESPONDENT'S BRIEF.**

**DAVID CHARNESS,**  
Milwaukee, Wisconsin,  
Counsel for Petitioner.

**ADOLPH I. MANDELKER,**  
of Counsel.



## INDEX to RESPONDENT'S BRIEF.

	Page
Nature of Proceedings .....	1
Statement of Facts .....	2
Issues Involved .....	10
I. Did the District Court have the power to make the order involved .....	10
II. Did the petitioner have notice of the proceed- ings .....	10
Argument	
I. The District Court did have the power to make the order involved .....	11
(a) Section 75 (e) of the Bankruptcy Act conferred highly discretionary powers upon the Court .....	11
(b) The Court exercised its discretion properly .....	12
(c) The decision of the Appellate Court is in accord with other decisions .....	13
II. The petitioner had sufficient notice of the pro- ceedings in the District Court .....	13
(a) Petitioner was charged with construc- tive notice of creditor's petition .....	13
(b) Petitioner and his attorney had actual notice and knowledge of creditor's pe- tition .....	15
Conclusion .....	19

## AUTHORITIES.

### *Cases Cited:*

	Page
Continental Illinois National Bank & Trust Co. vs. Rock Island Ry., 294 U. S. 648, 677, 55 S. Ct. 595, 606, 79 L. Ed. 1110 .....	12, 13
Heffron vs. Western Loan & Building Co., 84 F. 2d 301 .....	12, 13
Henderson (C. C. A. 5), 100 Fed. (2) 820 .....	14
In re Kalb vs. Yellow Manufacturing Corpora- tion, 127 F. 2d 513 .....	2, 10, 18
Massey vs. Farmers & Merchants Nat. Bank & Trust Co. of Winchester, Va., et al (C. C. A. 4), 94 Fed. (2) 526 .....	14

### *Statutes Cited:*

Subsection E, Chapter 75, Bankruptcy Act .....	11
--	----

In The  
**SUPREME COURT OF THE UNITED STATES**

October Term, 1942

No. ....

---

---

ERNEST NEWTON KALB,

Petitioner,

vs.

YELLOW MANUFACTURING ACCEPTANCE  
CORPORATION,

Respondent.

---

On application for Writ of Certiorari to the United States  
Circuit Court of Appeals for the Seventh Circuit.

---

---

**RESPONDENT'S BRIEF.**

---

---

**NATURE OF PROCEEDINGS.**

This is an application by petitioner for the issuance of a writ of certiorari to review a decision of the Circuit Court of Appeals for the Seventh Circuit, rendered on

April 20, 1942, in *In re: Kalb vs. Yellow Manufacturing Acceptance Corporation*, 127 F. 2d 511.

### STATEMENT OF FACTS.

The farmer debtor filed his petition in proceedings under Chapter 75 of the Bankruptcy Act on May 28, 1941. On June 2, 1941, the matter was referred to F. H. Belton, Conciliation Commissioner, at Elkhorn, Wisconsin. Attached to the petition was schedule A-2 in which Yellow Manufacturing Acceptance Corporation, Detroit, Michigan, was listed as a secured creditor having a chattel mortgage on two General Motors trucks of one and one-half (1 1/2) ton and three-quarters (3/4) ton each. Attached to the petition and constituting a part of the proposal is the following:

#### Yellow Manufacturing Corporation:

To pay said debt in full as per terms of the mortgages of said security. The provision first stated as to time being computed from the date of confirmation of this offer not to apply to this creditor. (R. 14)

The Conciliation Commissioner noticed the first meeting of creditors at Elkhorn, Wisconsin, on July 1, 1941, and at that meeting H. Feuerstein and Helen Feuerstein, who had been listed as secured creditors in the schedules, filed a petition with the Conciliation Commissioner requesting an order striking certain real estate from the debtor's schedules. At that hearing the petitioner was present and represented by Elmer McClain, his attorney and respondent was represented by Adolph I. Mandelker, its attorney. The question of respondent's secured claim was considered by the Conciliation Commissioner and after discussion thereon an agreement was made at the hearing approved by the Conciliation Commissioner and agreed to by the

petitioner and his attorney and by the attorney for the respondent to the effect that payments as provided for in the contracts would be made upon the secured claims of the respondent to the Conciliation Commissioner, who would hold the same in escrow until further proceedings had been had in the matter.

On July 20, 1941, Adolph I. Mandelker, attorney for Yellow Manufacturing Acceptance Corporation, filed with the Conciliation Commissioner a petition on behalf of said creditor, which petition is as follows:

**In The**  
**District Court of the United States**  
**For the Eastern District of the State of Wisconsin**

In the Matter of

**ERNEST NEWTON KALB,**

**Debtor.**

} In Proceedings for a  
Composition or  
Extension.

To: **GEORGE H. BELTON,**  
Conciliation Commissioner:

The petition of *Adolph I. Mandelker*, respectfully represents and shows as follows:

1. That he is the attorney for Yellow Manufacturing Acceptance Corporation, a foreign corporation, duly licensed to do business in the State of Wisconsin. That there is no officer of said corporation presently in the State of Wisconsin and that your petitioner makes this petition



for and on behalf of said Yellow Manufacturing Acceptance Corporation, being authorized to do so.

2. That Yellow Manufacturing Acceptance Corporation is listed in the schedule of "creditors holding securities" filed in the above entitled matter as holding liens on the vehicles hereinafter described.

3. That Yellow Manufacturing Acceptance Corporation is the present owner and holder of a certain conditional sales contract executed on the 23rd day of November, 1940, by and between Ernest Kalb, as buyer, and Melcher Nash Sales of Elkhorn, Wisconsin, as seller. That said contract was in the original amount of One Thousand One Hundred Sixty Five and Ninety-five hundredths (\$1165.95) Dollars. That said contract provided for the purchase and sale of

One GMC Model No. CC-304, Motor No. C22874060,  
Chassis No. 2654.

That at the time said contract was acquired by Yellow Manufacturing Acceptance Corporation there was a deferred balance due thereon of Eight Hundred Twenty Two and Ninety-five hundredths (\$822.95) Dollars. That said contract provided for the payment of the sum of Forty Five and Seventy-two hundredths (\$45.72) Dollars on the 10th day of each month beginning with the 10th day of January, 1941. That the payments which became due on the 10th day of June, and the 10th day of July, 1941, have not been paid and that said contract is in arrears in the sum of Ninety One and Forty-four hundredths (\$91.44) Dollars.

4. That Yellow Manufacturing Acceptance Corporation is the present owner and holder of a certain conditional sales contract executed on the 11th day of April, 1941, by and between Ernest Kalb, as buyer, and Melcher Nash Sales of Elkhorn, Wisconsin, as seller. That said contract was in the original amount of Nine Hundred Four and Fifty-four hundredths (\$904.54) Dollars. That said contract provided for the purchase and sale of

One GMC, Model No. CC-152, Motor No. B22894076,  
Chassis No. 2163.

That at the time said contract was acquired by Yellow Manufacturing Acceptance Corporation there was a deferred balance due thereon of Six Hundred Thirty One and Forty-eight hundredths (\$631.48) Dollars. That such contract provided for the payment of the sum of Thirty Five and Eight hundredths (\$35.08) Dollars on the 11th day of each month beginning with the 11th day of May, 1941. That the payments which became due on the 11th day of June and the 11th day of July, 1941, have not been paid and that said contract is in arrears in the sum of Seventy and Sixteen hundredths (\$70.16) Dollars.

5. That in the proposed plan filed by petitioner, Ernest Newton Kalb, it was proposed that all payments upon the aforescribed contracts would be made as due pursuant to the terms of said contracts.

6. That at the hearing held before George H. Belton, Conciliation Commissioner, at Elkhorn, Wisconsin, on July 1, 1941, it was agreed by the petitioner, Ernest Newton Kalb, and his attorney, and your petitioner, as the attorney for Yellow Manufacturing Acceptance Corporation, that said Ernest Newton Kalb would be allowed to retain possession of the above described vehicles on condition that payment of Eighty and Eighty hundredths (\$80.80) Dollars would be made each month commencing immediately to George H. Belton, Conciliation Commissioner, who would hold the same in escrow for future disposition thereof. That such payment would be considered as evidence of the good faith of said Ernest Newton Kalb.

7. That attached hereto and marked Exhibit "A" is a copy of a letter received by your petitioner under date of July 3, 1941, from the attorney for Ernest Newton Kalb, and that attached hereto and marked Exhibit "B" is a

copy of a letter addressed to the attorney for Ernest Newton Kalb in reply to said Exhibit "A".

8. That your petitioner has not to the date of the signing of this petition been advised that any payment has been made to the Conciliation Commissioner upon the aforedescribed conditional sales contracts as agreed in open Court on July 1, 1941, as hereinbefore stated.

9. That by the terms of the conditional sales contracts heretofore described the title to the above described vehicles do not vest in Ernest Kalb, he having only the right of possession when not in default, and that Yellow Manufacturing Acceptance Corporation is entitled, by the terms of said contracts, to the immediate possession thereof upon default in payments.

10. That the vehicles described heretofore and sold under the terms of the conditional sales contracts are depreciating in value and that continued use thereof by the petitioner without payment of the installments due thereon is detrimental to the interests of Yellow Manufacturing Acceptance Corporation.

11. That the failure of Ernest Newton Kalb to deposit the moneys as agreed on July 1, 1941, is wilful and in the opinion of your petitioner is evidence of the bad faith of said Ernest Newton Kalb, insofar as the interests of Yellow Manufacturing Acceptance Corporation is concerned.

*Wherefore* your petitioner prays for an order upon said Ernest Newton Kalb requiring him to surrender the herein described vehicles to Yellow Manufacturing Acceptance Corporation or for such other order or relief as may be fair and proper in the premises.

ADOLPH I. MANDELKER.

State of Wisconsin, }  
 Milwaukee County. } ss.

I, *Adolph I. Mandelker*, the petitioner named in the foregoing petition do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

ADOLPH I. MENDELKER.

Subscribed and sworn to before me this 19th day of July, 1941.

ROBERT D. JONES,  
 Notary Public, Milwaukee County, Wisconsin.

My Commission expires: Aug. 20, 1944.

### **Exhibit "A"**

ELMER McCLAIN  
 Attorney at Law  
 L I M A, O H I O

July 3, 1941

Mr. Adolph I. Mandelker  
 Attorney at Law  
 606 West Wisconsin Avenue  
 Milwaukee, Wisconsin

Dear Mr. Mandelker:

Re: *Ernest N. Kalb*

Your letter of July 2 came this morning. Mr. Kalb filed his farmer debtor petition solely because he wishes to regain his farm which the mortgage holder has illegally held since March 15, 1935. (See *Kalb vs. Feuerstein*, 308 U. S. 433.)

Your client is entitled to be paid and Mr. Kalb proposes to pay in full but he would like to slow up some on the amount of the payments until the issue raised by the motion and petition to dismiss the farm is adjudicated.

This is a drain on his resources which he had not anticipated and it comes at a time when he must slacken up on his hauling to attend to his farming. And his farming requires expense now with no present income.

So I wish to ask whether your client will not be willing to accept one-half of the stipulated payments, either \$80.80 every alternate month or \$40.40 each month. Mr. Kalb is, and probably will continue to be, a good customer and he takes excellent care of his trucks. I think also there is ample equity in the security, especially in view of rising prices.

Yours very truly,

ELMER McClAIN (SIGNED)

Elmer McClain

EmcC:V

**Exhibit "B"**

July 5, 1941

Mr. Elmer McClain  
Attorney at Law  
Lima, Ohio

Re: *Ernest Kalb*

Dear Sir:

I have your letter of July 3 in the above-entitled matter and have noted its contents.

If the petition had not been filed, client would expect Kalb to make his payments as they come due. If all creditors had accepted the offer made on

Tuesday last, the payments would be due as contracted. I can, therefore, see no merit in Mr. Kalb's request for a fifty per cent reduction in payment on the contracts.

I will expect Mr. Kalb to make the first payment to the Commissioner in the next few days.

Very truly yours,

ADOLPH I. MANDELKER.

AIM:sg

A copy of said petition and the letter accompanying the same to the Commissioner was forwarded by the respondent's attorney to the petitioner and his attorney.

The Conciliation Commissioner sent such petition to the Clerk of the District Court and it was filed by said Clerk on the 30th day of July, 1941. The Feuerstein petition came on for hearing before the Judge of the District Court on August 5, 1941. At that time the debtor and his attorney were present in Court. On the same day and directly following the hearing on the Feuerstein matter, while the debtor and his attorney were in Court, the Court took up the matter of the consideration of the petition of the Yellow Manufacturing Acceptance Corporation, and after hearing thereon ordered the trucks to be turned over to the Yellow Manufacturing Acceptance Corporation, which order was formally entered on October 20, 1941.

It is to be particularly noted that in the proposal to this secured creditor (R. p. 14), debtor made no request for either a composition or extension, his offer being:

"Yellow Manufacturing Corporation;

To pay said debt in full as per terms of the mortgages of said security. The provision first states as to time being computed from the date of confirmation of this offer not to apply to this creditor."

Respecting this offer, and the failure of the debtor to comply therewith, the lower court said in its decision (127 F. 2d 513):

“Debtor made a promise to pay the purchase price of the two trucks. He asked no concession as to these two notes in his offer of compromise to the Conciliator, and he fixed the amounts and dates when he would make payments on said notes. This offer invited confidence in debtor’s asserted good faith. The payments so promised, however, were not forthcoming. After missing two months’ payments and when the creditor sought enforcement of the chattel mortgages, debtor’s counsel proposed to change the terms of debtor’s promise. He did not, however, make any payment on debtor’s past indebtedness.”

### ISSUES INVOLVED.

- I Did the District Court Have the Power to Make the Order Involved.
- II Did the Petitioner Have Notice of the Proceedings.

### DECISION OF APPELLATE COURT.

The decision of the Circuit Court of Appeals for the Seventh Circuit is to be found in 127 F. 2d 513, where the Court said:

“This situation called for the exercise of judicial discretion. It was a discretion for the District Court to exercise. On review, we look only to ascertain whether there was an abuse of such discretion. We find none.

This order only affects possession. Sec. 75 (e) gives to the court power to control property and its possession pending negotiations.

The District Court was justified in considering debtor’s promises, his failure to keep the promises, his effort to change the promises without making

any payments of the lesser sum which he proposed. Also in this picture was the debtor's effort to avoid the hearing, when the creditor sought an order from the court for the possession of the trucks."

## **Argument.**

### **I.**

#### **The District Court did have the Power to Make the Order Involved.**

- (a) Section 75 (e) of the Bankruptcy Act conferred highly discretionary powers upon the Court.

Section 75 (e) of the Bankruptcy Act provides that: "after the filing of the petition and prior to the confirmation or other disposition of the composition or extension proposal by the Court, the Court shall exercise such control over the property of the farmer as the Court deems in the best interests of the farmer and his creditors."

This section clearly confers upon the Court Control over the property of the farmer prior to confirmation or any other disposition of the proposal in the best interests of the farmer and his creditors.

It clearly gives to the Court the right to exercise its own discretion, uncontrolled by any other mandatory provision of the act, in dealing with the property of the debtor during the pendency of the composition or extension proposal. It calls upon the Court to exercise its discretion for the best interests of the farmer and his creditors.

It does not say that a creditor's rights should be disregarded. It does not say that his security should not be protected. It does not say that the farmer is entitled to continue in possession of property in all events. It vests the Court with absolute discretion in the control of the property involved. It is an administrative power. This



is a highly discretionary power and, unless there is a clear abuse thereof, the action of the Court should not be disturbed. In *Continental Illinois National Bank & Trust Co. vs. Rock Island Ry.*, 294 U. S. 648, 677, 55 S. Ct. 595, 606, 79 L. Ed. 1110, the court was asked to disturb an order denying a petition for leave to sell collateral security on the ground of depreciating values. This Court in describing the power of the Court to deal with the control of property during reorganization proceedings said:

“It may be, as suggested, that during the period of restraint the collateral will decline in value; but the same may be said in respect of an injunction against the sale of real estate upon foreclosure of a mortgage; and such an injunction may issue in an ordinary proceeding in bankruptcy. —A claim that injurious consequences will result to the pledgee or mortgagee may not, of course, be disregarded by the District Court; but it presents a question addressed not to the power of the court but to its discretion—a matter not subject to the interference of an appellate court unless such discretion be improvidently exercised.”

To the same effect see *Heffron vs. Western Loan & Building Co.*, 84 F. 2d 301.

**(b) The Court Exercised Its Discretion Properly.**

The proposal of the petitioner did not ask this creditor for a composition or extension. It offered to make payments under the original terms of the purchase contract. Its offer was accepted by creditor. The debtor failed to keep his promise and make his payments. The Court was then asked to return the possession of the trucks to the creditor in order that its security should be protected. This was a petition directed to the sound discretion of the Court. It had before it the debtor's proposal and the affidavit of creditor's attorney showing failure of the debtor to comply with his own proposal. The Court was being asked not only to pass on what was for the best interests of

the debtor but also for the best interests of the creditor. This discretion was clearly granted to it by section 75 (e). As the Appellate Court said, it was a situation calling for the exercise of judicial discretion, and it was not called upon to disturb an order, administrative in character, and calling for the exercise of sound discretion.

(c) **The Decision of the Appellate Court is in Accord with other Decisions.**

None of the decisions cited by petitioner go to the question of the right of the Court under section 75 (e) to exercise its power and control over property of the debtor in a discretionary manner. They go, only to the right to abandon its jurisdiction over such property. The order here did not release jurisdiction over the property but merely directed its possession to change hands pending the proceedings. This was a discretionary power. The decision of the Circuit Court of Appeals holding that it was such a discretionary power, and that the exercise thereof was not an abuse of discretion, is in accord with *Continental Illinois National Bank & Trust Co. vs. Rock Island Ry.*, and *Heffron vs. Western Loan & Building Co.*, *supra*.

## II.

### **The Petitioner Had Sufficient Notice of the Proceedings in the District Court.**

(a) **Petitioner was Charged with Constructive Notice of the Creditor's Petition.**

The debtor was charged with notice of the petition of Yellow Manufacturing Acceptance Corporation filed with the Conciliation Commissioner and with the Clerk of the District Court on July 30, 1941.

The proceedings in question are under Section 75 of the Bankruptcy Act, which is a proceeding by farmer debtor

for composition or extension of debts. In proceedings of this nature the initiative and burden is upon the debtor and he is charged with notice and knowledge of every stage of the proceedings.

The rule has been stated in *In re: Henderson* (C. C. A. 5), 100 Fed. (2) 820, that in a proceeding by a debtor for a composition or extension of his debts, the debtor is charged with notice of the various steps taken in the proceedings, which includes the reports of the Conciliation Commissioner and the supervising Conciliation Commissioner.

It has also been stated in *Massey vs. Farmers & Merchants Nat. Bank & Trust Co. of Winchester, Va., et al* (C. C. A. 4), 94 Fed. (2d) 526, that in agricultural composition proceedings a debtor is bound to take notice of the filing of the Conciliation Commissioner's report recommending dismissal of the petition.

The burden is thus placed upon the debtor to watch the proceedings, particularly the reports of the Conciliation Commissioner as filed with the Clerk of the Court in which the proceedings are pending.

It would appear from the docket entries of the Clerk of Court that on July 30, 1941, the petition of Adolph I. Mandelker, on behalf of Yellow Manufacturing Acceptance Corporation, was filed. It would also appear from the docket that on July 18, 1941, the Feuerstein petition had been filed together with a report of the Conciliation Commissioner on that petition. Thus the docket clearly gave notice to the debtor and his attorney of the pendency of both petitions before the Court. The matters involved in this petition affected the alleged assets of the debtor, which were under the supervision and control of the Court. With respect to the proceedings on the Feuerstein petition it would appear that notice of hearing thereof had been given to the attorney for the debtor by the Clerk of the District Court by letter on July 21, 1941.

These proceedings are in rem and the supervision of the property was before the Court at all times, and the debtor is under the decisions charged with notice of all proceedings in rem affecting said property.

The debtor, therefore, in this matter is charged with notice and knowledge of the proceedings before the Commissioner and before the Court as disclosed by the docket of the Clerk of the District Court.

(b) **Petitioner Had Actual Knowledge of Creditor's Petition.**

The petitioner had actual notice of the petition pending before the Conciliation Commissioner and the Court.

The attorney for the petitioner not only received a copy of said petition and order to show cause and copy of the letter sent to the Conciliation Commissioner but did on the 24th day of July, 1941, address a letter to the Conciliation Commissioner, which letter was in the nature of a reply to said petition and which letter is as follows:

**ELMER McCLAIN**

Attorney.

L I M A, O H I O

July 24, 1941

Honorable George H. Belton  
Conciliation Commissioner  
Elkhorn, Wisconsin

Dear Mr. Belton:

Re: *E. N. Kalb, Farmer*  
*Debtor, Case No. 22114*

Upon my return to my office after several days absence I have before me a copy of a letter from Attorney Mandelker to you together with a copy of

a proposed "Order to Show Cause" and a copy of a proposed petition by Attorney Mandelker.

I must oppose any procedure as suggested by Attorney Mandelker.

It is true that Mr. Kalb desires to and will undoubtedly pay the Yellow Manufacturing, etc. Company in full. His proposal is before the court and upon its acceptance as provided by the statute it will be complied with.

The conciliation commissioner has no power to issue such an order as is proposed. The "red tape" referred to are the legal provisions enacted to protect the farmer debtor and his property while the case is pending in the federal court. What is asked here that the conciliation commissioner do is exactly what the Supreme Court has decided the court may not do. The Supreme Court has also decided that even by the consent of the farmer debtor, the court may not deviate from the procedure prescribed by statute.

It is also true that it was not the debt due the Yellow Manufacturing Company that caused Mr. Kalb to file his petition. But the law requires him to include *all* his debts and *all* his property. Upon reflection it has been realized that the new litigation the Feuersteins have started may be prolonged and expensive if it should go to the point of requiring printing, etc. Mr. Kalb is going to redeem his farm if he can and he can not jeopardise his plans by favoring a creditor against the

**ELMER McCLAIN**

Attorney.

L I M A, O H I O

Honorable George H. Belton    July 24, 1941    2  
provisions of the law. He would like to pay less than the full amounts called for but the creditor will not consent to less than the full sum.

Even if the petition was a proper one to be filed, it is wholly improper as it is. The creditor is The

Yellow Manufacturing Acceptance Corporation. It has filed no petition and would not be bound by any order the court would issue against it under this petition. It is Attorney Mandelker who has filed the petition and he is not a creditor. No litigant may through another ask a favor from a court unless it can also be bound by any order the court might make against it. Whatever any creditor asks for it should ask in its own name.

I am sending a copy of this letter to Attorney Mandelker.

Yours very truly,

Elmer McClain

EMcC:V

cc to Mr. Adolph I. Mandelker  
Attorney at Law  
606 West Wisconsin Avenue  
Milwaukee, Wisconsin

The foregoing clearly shows that the attorney for petitioner received a copy of the petition and had actual knowledge and notice that the same had been filed with the Conciliation Commissioner and was pending before him for the relief requested therein. Instead of filing any formal pleading in opposition to the petition, the attorney for the debtor availed himself of a letter to voice his opposition thereto. Therefore it is evident that when the debtor and his attorney were asked by the District Court as to whether or not they had anything to say with reference to the petition of Yellow Manufacturing Acceptance Corporation, which had been filed with the Conciliation Commissioner, and thereafter filed by the Conciliation Commissioner with the Clerk of the District Court, and which was then pending before the Court both the debtor and his attorney knew of the pendency of the proceedings on said petition as well as the existence of the petition. These facts were presented to the District Court in the statement

of counsel for respondent and the letter of July 24th heretofore referred to was also called to the attention of the Court as were the docket entries of the Clerk.

Petitioner would have the Court believe that the petition of the Yellow Manufacturing Acceptance Corporation descended upon him out of the clear skies and that he had never heard about it before. The record and facts do not substantiate the statements made in petitioner's brief but to the contrary clearly disclose and show that actual notice and knowledge of the petition and the pendency thereof was had by both the debtor and his attorney.

The Circuit Court of Appeals had this to say about the claim of lack of knowledge and notice (127 F. 2d 513):

“Appellants' statement of the facts re his lack of notice is set forth in the margin.\* His contention that he has been denied his property without due process of law, i. e., notice, is frivolous. The letter from debtor's counsel acknowledged receipt of the petition for surrender of the trucks.\*\* He filed no answer or objection thereto. When the matter was called for hearing both debtor and counsel were in court. They refused to consider the petition on the ground that they had no notice of a hearing of said petition. They did not ask for a continuance. No suggestion was made that at a later date they could better present the facts upon which relief was dependent. Nothing further was done in the matter until the order of the District Court was entered October 20. Debtor had ample time after August 5 to inform the court as to the good faith of his promises. Instead, the record continued to date of order, as promises vs. non-action.

It should require no further argument nor citation of authority to show that petitioner is not sincere in his argument that the order of the District Court was made without due process.

**CONCLUSION.**

It is therefore respectfully submitted that petitioner's application for a writ of certiorari should be denied because

1. Section 75 (e) Conferred the power upon the District Court to Make the order involved:
2. The order was made after due process; and
3. The decision of the Circuit Court of Appeals is in accord with the prevailing authorities,

Respectfully submitted,

DAVID CHARNESS,  
Counsel for Respondent  
Yellow Manufacturing Corporation.

ADOLPH I. MANDELKER,  
of Counsel.

Milwaukee, Wis.

September 16, 1942.



17 (3)

## AGRICULTURAL COMPOSITIONS AND EXTENSIONS

---

### SECTION 75 OF THE BANKRUPTCY ACT AS AMENDED BY—

PUBLIC 296 OF THE SEVENTY-THIRD CONGRESS  
PUBLIC 60 OF THE SEVENTY-FOURTH CONGRESS  
PUBLIC 384 OF THE SEVENTY-FOURTH CONGRESS  
PUBLIC 439 OF THE SEVENTY-FIFTH CONGRESS  
PUBLIC 696 OF THE SEVENTY-FIFTH CONGRESS  
PUBLIC 423 OF THE SEVENTY-SIXTH CONGRESS

TITLE 11, SECTION 203, UNITED STATES CODE

---

(Reprint of Senate Document No. 55, 75th Congress)



PRESENTED BY MR. NYE  
FOR MR. FRAZIER

JUNE 10 (legislative day, MAY 28), 1940.—Ordered to be printed  
with certain corrections

---

UNITED STATES  
GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1940



# AGRICULTURAL COMPOSITIONS AND EXTENSIONS

[PUBLIC—No. 420—72D CONGRESS]

[H. R. 14359]

## AN ACT

To amend an Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, and Acts amendatory thereof and supplementary thereto.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Act of July 1, 1898, entitled "An Act to establish a uniform system of bankruptcy throughout the United States," as amended by the Acts of February 5, 1903, June 15, 1906, June 25, 1910, March 2, 1917, January 7, 1922, May 27, 1926, and February 11, 1932, be, and it is hereby, amended by adding thereto a new chapter to read as follows:

## "CHAPTER VIII

[As amended by the 73rd, 74th, 75th, and 76th Congresses]

### "PROVISIONS FOR THE RELIEF OF DEBTORS

"SEC. 75. AGRICULTURAL COMPOSITIONS AND EXTENSIONS.—(a) Within thirty days after June 7, 1934, every court of bankruptcy of which the jurisdiction or territory includes a county or counties having an agricultural population (according to the last available United States census) of five hundred or more farmers shall appoint one or more referees to be known as 'conciliation commissioners', one such conciliation commissioner to be appointed for each county having an agricultural population of five hundred or more farmers according to said census: *Provided further,* That where any county in any such district contains a smaller number of farmers according to said census, for the purposes of this paragraph such county shall be included with one or more adjacent counties where the population of the counties so combined includes five hundred or more farmers, according to said census. In case more than one conciliation commissioner is appointed for a county, each commissioner shall act separately and shall have such territorial jurisdiction within the county as the court shall specify. A conciliation commissioner shall have a term of office for one year and may be removed by the court if his services are no longer needed or for other cause. No individual shall be eligible to appointment as a conciliation commissioner unless he is eligible for appointment as a referee<sup>1</sup> and in addition is a resident

<sup>1</sup> Sec. 35 of Chandler Act, Public, 696, of the 75th Cong., requires all new referees to be attorneys.

of the county, familiar with agricultural conditions therein and not engaged in the farm-mortgage business, the business of financing farmers or transactions in agricultural commodities or the business of marketing or dealing in agricultural commodities or of furnishing agricultural supplies. In each judicial district the court may, if it finds it necessary or desirable, appoint a suitable person as a supervising conciliation commissioner. The supervising conciliation commissioner shall have such supervisory functions under this section as the court may by order specify.

"(b) Upon filing of any petition by a farmer under this section there shall be paid a fee of \$10 to be transmitted to the clerk of the court and covered into the Treasury. The conciliation commissioner shall receive as compensation for his services, a fee of \$25 for each case submitted to him, ~~and when docketed, to be paid out of the Treasury to be paid out of the Treasury when the conciliation commissioner completes the duties assigned to him by the court.~~ A supervising conciliation commissioner shall receive, as compensation for his services, a per diem allowance to be fixed by the court, in an amount not in excess of \$5 per day, together with subsistence and travel expenses in accordance with the law applicable to officers of the Department of Justice. Such compensation and expenses shall be paid out of the Treasury. If the creditors at any time desire supervision over the farming operations of a farmer, the cost of such supervision shall be borne by such creditors or by the farmer, as may be agreed upon by them, but in no instance shall the farmer be required to pay more than one-half of the cost of such supervision. Nothing contained in this section shall prevent a conciliation commissioner who supervises such farming operations from receiving such compensation therefor as may be so agreed upon. No fees, costs, or other charges shall be charged or taxed to any farmer or his creditors by any conciliation commissioner or with respect to any proceeding under this section, except as hereinbefore in this section provided. The conciliation commissioner may accept and avail himself of office space, equipment, and assistance furnished him by other Federal officials, or by any State, county, or other public officials. The Supreme Court is authorized to make such general orders as it may find necessary properly to govern the administration of the office of conciliation commissioner and proceedings under this section; but any district court of the United States may, for good cause shown and in the interests of justice, permit any such general order to be waived.

"(c) At any time ~~within 5 years after March 3, 1933,~~ prior to March 4, 1944, a petition may be filed by any farmer, stating that the farmer is insolvent or unable to meet his debts as they mature, and that it is desirable to effect a composition or an extension of time to pay his debts. The petition or answer of the farmer shall be accompanied by his schedules. The petition and answer shall be filed with the court, but shall, on request of the farmer or creditor, be received by the conciliation commissioner for the county in which the farmer resides and promptly transmitted by him to the clerk of the court for filing. If any such petition is filed, an order of adjudication shall not be entered except as provided hereinafter in this section.

"(d) After the filing of such petition or answer by the farmer, the farmer shall, within such time and in such form as the rules provide, file an inventory of his estate.

"(e) The conciliation commissioner shall promptly call the first meeting of creditors, stating in the notice that the farmer proposes to offer terms of composition or extension, and inclosing with the notice a summary of the inventory, a brief statement of the farmer's indebtedness as shown by the schedules, and a list of the names and addresses of the secured creditors and unsecured creditors, with the amounts owing to each as shown by the schedules. At the first meeting of the creditors the farmer may be examined, and the creditors may appoint a committee to submit to the conciliation commissioner a supplementary inventory of the farmer's estate. The conciliation commissioner shall, after hearing the parties in interest, fix a reasonable time within which application for confirmation shall be made, and may later extend such time for cause shown. After the filing of the petition and prior to the confirmation or other disposition of the composition or extension proposal by the court, the court shall exercise such control over the property of the farmer as the court deems in the best interests of the farmer and his creditors.

"(f) There shall be prepared by, or under the supervision of, the conciliation commissioner a final inventory of the farmer's estate, and in the preparation of such inventory the commissioner shall give due consideration to the inventory filed by the farmer and to any supplementary inventory filed by a committee of the creditors.

"(g) An application for the confirmation of a composition or extension proposal may be filed in the court of bankruptcy after, but not before, it has been accepted in writing, by a majority in number of all creditors whose claims have been allowed, including secured creditors whose claims are affected, which number shall represent a majority in amount of such claims.

"(h) A date and place, with reference to the convenience of the parties in interest, shall be fixed for a hearing upon each application for the confirmation of the composition or extension proposal and upon such objections as may be made to its confirmation.

"(i) The court shall confirm the proposal if satisfied that (1) it includes an equitable and feasible method of liquidation for secured creditors and of financial rehabilitation for the farmer; (2) it is for the best interests of all creditors; and (3) the offer and its acceptance are in good faith, and have not been made or procured except as herein provided, or by any means, promises, or acts herein forbidden. In applications for extensions the court shall require proof from each creditor filing a claim that such claim is free from usury as defined by the laws of the place where the debt is contracted.

"(j) The terms of a composition or extension proposal may extend the time of payment of either secured or unsecured debts, or both, and may provide for priority of payments to be made during the period of extension as between secured and unsecured creditors. It may also include specific undertakings by the farmer during the period of the extension, including provisions for payments on account, and may provide for supervisory or other control by the conciliation commissioner over the farmer's affairs during such period, and for the termination of such period of supervision or control under conditions specified: *Provided*, That the provisions of this section shall not affect the allowances and exemptions to debtors as are provided for bankrupts under title 11, chapter 3, section 24,

of the United States Code, and such allowances and exemptions shall be set aside for the use of the debtor in the manner provided for bankrupts.

“(k) Upon its confirmation, a composition or extension proposal shall be binding upon the farmer and his secured and unsecured creditors affected thereby: *Provided, however,* That such extension and/or composition shall not reduce the amount of or impair the lien of any secured creditor below the fair and reasonable market value of the property securing any such lien at the time that the extension and/or composition is accepted, but nothing herein shall prevent the reduction of the future rate of interest on all debts of the debtor, whether secured or unsecured.

“(l) Upon the confirmation of a composition the consideration shall be distributed under the supervision of the conciliation commissioner as the court shall direct, and the case dismissed: *Provided,* That the debts having priority of payment under title 11, chapter 7, section 104, of the United States Code, for bankrupt estates, shall have priority of payment in the same order as set forth in said section 104 under the provisions of this section in any distribution, assignment, composition, or settlement herein provided for. Upon the confirmation of an extension proposal the court may dismiss the proceeding or retain jurisdiction of the farmer and his property during the period of the extension in order to protect and preserve the estate and enforce through the conciliation commissioner the terms of the extension proposal. The court may, after hearing and for good cause shown, at any time during the period covered by an extension proposal that has been confirmed by the court, set the same aside, reinstate the case, and modify the terms of the extension proposal.

“(m) The judge may, upon the application of any party in interest, file at any time within six months after the composition or extension proposal has been confirmed, set the same aside and reinstate the case, if it shall be made to appear upon a trial that fraud was practiced in the procuring of such composition or extension, and that knowledge thereof has come to the petitioners since the confirmation thereof.

“(n) The filing of a petition or answer with the clerk of court, or leaving it with the conciliation commissioner for the purpose of forwarding same to the clerk of court, praying for relief under section 75 of this Act, as amended, shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including, among others, contracts for purchase, contracts for deed, or conditional sales contracts, the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition.

“In all cases where, at the time of filing the petition, the period of redemption has not or had not expired, or where the right under a deed of trust has not or had not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extended or the confirma-

tion of sale withheld for the period necessary for the purpose of carrying out the provisions of this section. The words 'period of redemption' wherever they occur in this section shall include any State moratorium, whether established by legislative enactment or executive proclamation, or where the period of redemption has been extended by a judicial decree. In proceedings under this section, except as otherwise provided herein, the jurisdiction and powers of the courts, the title, powers, and duties of its officers, the duties of the farmer, and the rights and liabilities of creditors, and of all persons with respect to the property of the farmer and the jurisdiction of the appellate courts, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the farmer's petition, asking to be adjudged a bankrupt, was filed with the clerk of court or left with the conciliation commissioner for the purpose of forwarding same to the clerk of court."

"(o) Except upon petition made to and granted by the judge after hearing and report by the conciliation commissioner, the following proceedings shall not be instituted, or if instituted at any time prior to the filing of a petition under this section, shall not be maintained, in any court or otherwise, against the farmer or his property, at any time after the filing of the petition under this section, and prior to the confirmation or other disposition of the composition or extension proposal by the court:

"(1) Proceedings for any demand, debt, or account, including any money demand;

"(2) Proceedings for foreclosure of a mortgage on land, or for cancellation, rescission, or specific performance of an agreement for sale of land or for recovery of possession of land;

"(3) Proceedings to acquire title to land by virtue of any tax sale;

"(4) Proceedings by way of execution, attachment, or garnishment;

"(5) Proceedings to sell land under or in satisfaction of any judgment or mechanic's lien; and

"(6) Seizure, distress, sale, or other proceedings under an execution or under any lease, lien, chattel mortgage, conditional sale agreement, crop payment agreement, or mortgage.

"(p) The prohibitions of subsection (o) shall apply to all judicial or official proceedings in any court or under the direction of any official, and shall apply to all creditors, public or private, and to all of the debtor's property, wherever located. All such property shall be under the sole jurisdiction and control of the court in bankruptcy, and subject to the payment of the debtor farmer's creditors, as provided for in section 75 of this Act."

"(q) A conciliation commissioner shall upon request assist any farmer in preparing and filing a petition under this section and in all matters subsequent thereto arising under this section and farmers shall not be required to be represented by an attorney in any proceeding under this section.

"(r) For the purposes of this section, and section 4 (b), and section 74, the term 'farmer' includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy

farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur."

"(s) Any farmer failing to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a composition and/or extension proposal, or if he feels aggrieved by the composition and/or extension, may amend his petition or answer, asking to be adjudged a bankrupt. Such farmer may, at the same time, or at the time of the first hearing, petition the court that all of his property, wherever located, whether pledged, encumbered, or unencumbered, be appraised, and that his unencumbered exemptions, and unencumbered interest or equity in his exemptions, as prescribed by State law, be set aside to him, and that he be allowed to retain possession, under the supervision and control of the court, of any part or parcel or all of the remainder of his property, including his encumbered exemptions, under the terms and conditions set forth in this section. Upon such a request being made, the referee, under the jurisdiction of the court, shall designate and appoint appraisers, as provided for in this Act. Such appraisers shall appraise all of the property of the debtor, wherever located, at its then fair and reasonable market value. The appraisals shall be made in all other respects with rights of objections, exceptions, and appeals, in accordance with this Act: *Provided*, That in proceedings under this section, either party may file objections, exceptions, and take appeals within four months from the date that the referee approves the appraisal.

"(1) After the value of the debtor's property shall have been fixed by the appraisal herein provided, the referee shall issue an order setting aside to such debtor his unencumbered exemptions, and his unencumbered interest or equity in his exemptions, as prescribed by the State law, and shall further order that the possession, under the supervision and control of the court, of any part or parcel or all of the remainder of the debtor's property shall remain in the debtor, as herein provided for, subject to all existing mortgages, liens, pledges, or encumbrances. All such existing mortgages, liens, pledges, or encumbrances shall remain in full force and effect, and the property covered by such mortgages, liens, pledges, or encumbrances shall be subject to the payment of the claims of the secured creditors, as their interests may appear.

"(2) When the conditions set forth in this section have been complied with, the court shall stay all judicial or official proceedings in any court, or under the direction of any official, against the debtor or any of his property, for a period of three years. During such three years the debtor shall be permitted to retain possession of all or any part of his property, in the custody and under the supervision and control of the court, provided he pays a reasonable rental semiannually for that part of the property of which he retains possession. The first payment of such rental shall be made within one year of the date of the order staying proceedings, the amount and kind of such rental to be the usual customary rental in the community where the property is located, based upon the rental value, net income, and



earning capacity of the property. Such rental shall be paid into court, to be used, first, for payment of taxes and upkeep of the property, and the remainder to be distributed among the secured and unsecured creditors, and applied on their claims, as their interests may appear. The court, in its discretion, if it deems it necessary to protect the creditors from loss by the estate, and/or to conserve the security, may order sold any unexempt perishable property of the debtor, or any unexempt personal property not reasonably necessary for the farming operations of the debtor, such sale to be had at private or public sale, and may, in addition to the rental, require payments on the principal due and owing by the debtor to the secured or unsecured creditors, as their interests may appear, in accordance with the provisions of this Act, and may require such payments to be made quarterly, semiannually, or annually, not inconsistent with the protection of the rights of the creditors and the debtor's ability to pay, with a view to his financial rehabilitation.

"(3) At the end of three years, or prior thereto, the debtor may pay into court the amount of the appraisal of the property of which he retains possession, including the amount of encumbrances on his exemptions, up to the amount of the appraisal, less the amount paid on principal: *Provided*, That upon request of any secured or unsecured creditor, or upon request of the debtor, the court shall cause a reappraisal of the debtor's property, or in its discretion set a date for hearing, and after such hearing, fix the value of the property, in accordance with the evidence submitted, and the debtor shall then pay the value so arrived at into court, less payments made on the principal, for distribution to all secured and unsecured creditors, as their interests may appear, and thereupon the court shall, by an order, turn over full possession and title of said property, free and clear of encumbrances to the debtor: *Provided*, That upon request in writing by any secured creditor or creditors, the court shall order the property upon which such secured creditors have a lien to be sold at public auction. The debtor shall have ninety days to redeem any property sold at such sale, by paying the amount for which any such property was sold, together with 5 per centum per annum interest, into court, and he may apply for his discharge, as provided for by this Act. If, however, the debtor at any time fails to comply with the provisions of this section, or with any orders of the court made pursuant to this section, or is unable to refinance himself within three years, the court may order the appointment of a trustee, and order the property sold or otherwise disposed of as provided for in this Act.

"(4) The conciliation commissioner, appointed under subsection (a) of section 75 of this Act, as amended, shall continue to act, and act as referee, when the farmer debtor amends his petition or answer, asking to be adjudged a bankrupt under the provisions of subsection (s) of section 75 of this Act, and continue so to act until the case has been finally disposed of. The conciliation commissioner, as such referee, shall receive such an additional fee for his services as may be allowed by the court, not to exceed \$35 in any case, to be paid out of the bankrupt's estate. No additional fees or costs of administration or supervision of any kind shall be charged to the farmer debtor when or after he amends his petition or answer, asking to be adjudged a bankrupt, under subsection (s) of section 75 of

this Act, but all such additional filing fees or costs of administration or supervision shall be charged against the bankrupt's estate. Conciliation commissioners and referees appointed under section 75 of this Act shall be entitled to transmit in the mails, free of postage, under cover of a penalty envelope, all matters which relate exclusively to the business of the courts, including notices to creditors. If, at the time that the farmer debtor amends his petition or answer, asking to be adjudged a bankrupt, a receiver is in charge of any of his property, such receiver shall be divested of possession, and the property returned to the possession of such farmer, under the provisions of this Act. The provisions of this Act shall be held to apply also to partnerships, common, entirety, joint, community ownerships, or to farming corporations where at least 75 per centum of the stock is owned by actual farmers, and any such parties may join in one petition.

~~"(5) This Act shall be held to apply to all existing cases now pending in any Federal court, under this Act as well as to future cases; and all cases that have been dismissed by any conciliation commissioner, referee, or court because of the Supreme Court decision holding the former subsection(s) unconstitutional, shall be promptly reinstated, without any additional filing fees or charges.~~

*"(5) This Act shall be held to apply to all existing cases now pending in any Federal Court, under this Section, as well as to future cases. All cases under this Section that have been dismissed by any conciliation commissioner, referee, or Federal Court because such Court erroneously assumed or held that subsection(s) of section 75 of this Act was unconstitutional, shall be promptly reinstated, without any additional filing fees or charges. Any farm debtor who has filed under the General Bankruptcy Act may take advantage of this section upon written request to the court; and a previous discharge of the debtor under any other section of this Act shall not be grounds for denying him the benefits of this section.*

*"(6) This Act is hereby declared to be an emergency measure and if in the judgment of the court such emergency ceases to exist in its locality, then the court, in its discretion, may shorten the stay of proceedings herein provided for and proceeded to liquidate the estate.*

